

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED

MAY 13 2004

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYReport to Congress Regarding)
the ORBIT Act)

IB Docket No 04-158

To: The International Bureau

COMMENTS OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation ("Lockheed Martin") hereby responds to the Public Notice inviting comments to be reflected in the Commission's progress report to Congress on the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").¹ As explained below, Lockheed Martin believes that the Commission should validate Inmarsat's approach towards meeting its remaining obligations under the ORBIT Act and report that the company has fully privatized in a manner consistent with the Act.

The ORBIT Act was enacted in March 2000 to promote a competitive market for satellite communications services through a fully privatized INTELSAT and Inmarsat.² To meet this objective, the Act requires the Commission to find that competition in the U.S telecommunications market will be harmed unless such privatization is "consistent with"

¹ Public Notice, Report No. SPB-206, April 23, 2004. Lockheed Martin is an interested party to this proceeding because its wholly owned subsidiary, COMSAT Investments, Inc., holds a 14.1 percent ownership interest in Inmarsat.

² ORBIT Act § 2.

No. of Copies rec'd 0+4
List ABCDE

ORIGINAL

the criteria specified in the Act.³ The Commission has determined that this "consistent with" standard of review affords it a "degree of flexibility" so as to avoid "frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation."⁴ Under this flexible standard, the Commission in 2001 determined that Inmarsat was privatized consistent with the non-initial public offering ("IPO") criteria specified in the ORBIT Act and, as a result, permanently authorized certain companies to use Inmarsat space segment – subject to the condition that Inmarsat conduct an IPO of securities that "substantially dilute[s]" its former signatories' ownership interests as required under the Act.⁵

Inmarsat has recently satisfied this IPO obligation and now must be deemed fully privatized. On February 10, 2004, Inmarsat informed the Commission of a series of integrated transactions, partially funded by an IPO of debt securities, leading to a majority equity interest in Inmarsat being held by private investors.⁶ As Inmarsat reported to the Commission, these transactions have resulted in non-former signatories holding approximately 57 percent of the company⁷ – a figure that is well more than double the 23 percent figure determined by the Commission, in the context of New Skies Satellites, N.V.,

³ *Id.* § 601(b)(2).

⁴ *In the Matter of COMSAT Corporation, Application for authority under Section 753(c) of the International Maritime Satellite Act and Section 214 of the Communications Act of 1934, as amended*, Memorandum Opinion, Order and Authorization, 16 FCC Rcd 21661, 21682 (2001).

⁵ *See id.* at 21694.

⁶ Letter from Alan Auckenthaler, Inmarsat Ventures Limited to Ms. Marlene H. Dortch, Federal Communications Commission, FCC File No. SAT-MS-20040210-00027 (February 10, 2004) ("ORBIT Act Compliance Letter").

⁷ *Id.* at 2.

to satisfy the ORBIT Act's substantial dilution requirement.⁸ Accordingly, the Commission should report to Congress that Inmarsat is now the independent, pro-competitive commercial entity envisioned by the ORBIT Act.

Inmarsat financed the transactions leading to the dilution of its former signatories' ownership interests, in part, through an IPO of debt securities listed for trading on the Luxembourg Stock Exchange.⁹ Inmarsat took this step in response to the adverse public equity market that prompted both the Congress and the Commission to extend the IPO deadline several times, and because the listing of debt securities is clearly "consistent with" the IPO provisions of the ORBIT Act.¹⁰ The Act stipulates that the "shares of any successor entities and separated entities shall be listed for trading on one or more major stock exchanges with transparent and effective securities regulation."¹¹ The Luxembourg Stock Exchange, a major exchange center for international bonds, equities and investment funds, plainly meets that standard. In addition, Inmarsat has indicated that it will register its offering of debt securities with the U.S. Securities and Exchange Commission, thereby subjecting itself to further securities regulations.¹²

While the ORBIT Act stipulates the listing of "shares," it does not require that the IPO of securities necessarily involve equity ownership. As Inmarsat explained, the

⁸ See *In the Matter of New Skies Satellites, N.V. Request For Unconditional Authority to Access The U.S. Market*, Memorandum Opinion and Order, 16 FCC Rcd 7482, 7488 (2001).

⁹ ORBIT Act Compliance Letter at 4.

¹⁰ *Id.* at 7.

¹¹ ORBIT Act § 621(5)(B).

¹² ORBIT Act Compliance Letter at 12.

common understanding of the term “securities” includes both equity and debt instruments¹³ In any event, Lockheed Martin believes that Inmarsat’s approach towards accelerating its progress towards full privatization should not be denied, particularly where that approach is so readily “consistent with” the pro-competitive goals of the Act.

Lockheed Martin agrees with Senator Conrad Burns, an author of the ORBIT Act, and the Executive Branch that Inmarsat has met fully met the objectives of the Act. In a letter to the National Telecommunications and Information Agency (“NTIA”), Senator Burns offered his opinion that the ORBIT Act’s pro-competitive policy objectives “may be achieved in a variety of ways, including an IPO, a private equity takeover, or other transactions that may have a bearing on the overall ownership profile of the former [signatories]”¹⁴ In response to Senator Burns, NTIA offered the Administration’s support of the view that the Inmarsat transactions leading to the dilution of the former signatories’ ownership, together with the IPO of debt securities, “materially fulfills the goals of [the ORBIT Act].”¹⁵ Under its flexible standard of review, the Commission should likewise determine that Inmarsat has complied with its remaining ORBIT Act requirements – and do so immediately to permit that determination to be reported to Congress on June 15, 2004.

¹³ *Id.* at 8.

¹⁴ Letter from Conrad Burns, United States Senate to Michael D. Gallagher, Acting Assistant Secretary, Department of Commerce, NTIA (January 21, 2004).

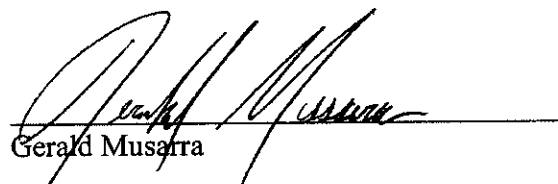
¹⁵ Letter from Michael D. Gallagher, Acting Assistant Secretary, Department of Commerce, NTIA to Conrad Burns, United States Senate (March 16, 2004).

Conclusion

For the foregoing reasons, Lockheed Martin urges the Commission to report to Congress that Inmarsat has fully complied with the privatization criteria under the ORBIT Act and now operates as an independent commercial entity.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

A handwritten signature in black ink, appearing to read "Gerald Musarra", is written over a horizontal line.

Vice President Trade and Regulatory Affairs
Washington Operations
Lockheed Martin Corporation
Crystal Square 2, Suite 300
1725 Jefferson Davis Highway
Arlington, VA 22202
(703) 413-5791

May 7, 2004